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8 Attorneys for Plaintiff  
FREECYCLESUNNYVALE,

9  
10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT**

12 **OAKLAND DIVISION**

13 FREECYCLESUNNYVALE,  
14 a California unincorporated association,

15 Plaintiff,

16 v.

17 THE FREECYCLE NETWORK,  
an Arizona corporation,

18 Defendant.

19  
20 THE FREECYCLE NETWORK, INC., an  
Arizona Corporation,

21 Counterclaimant,

22 v.

23 FREECYCLESUNNYVALE, a California  
24 unincorporated association,

25 Counterdefendant.

26 Case No. C06-00324 CW

27  
28 **DECLARATION OF KENNETH A.  
HEDDEN, SR., IN SUPPORT OF  
PLAINTIFF AND  
COUNTERDEFENDANT  
FREECYCLESUNNYVALE'S MOTION  
FOR SUMMARY ADJUDICATION**

Date: August 23, 2007  
Time: 2:00 p.m.  
Before: Hon. Claudia Wilken  
Location: Courtroom 2

1 I, Kenneth A. Hedden, Sr., declare as follows:

2 1. I am a resident of Schroon Lake, New York. I am a former senior volunteer for  
 3 The Freecycle Network, Inc., the Defendant and Counterclaimant in the above-captioned lawsuit.  
 4 I know the following facts of my own knowledge and, if called as a witness, could and would  
 5 competently testify to the following facts.

6 2. I joined the grassroots freecycle movement in January 2004. From approximately  
 7 January 1, 2004, through May 7, 2004, I started seven online freecycling groups for the  
 8 following New York communities: Schroon Lake, Clifton Park, Essex County, Warren County,  
 9 Clinton County, Saratoga County, and Rennselear County.

10 3. When I started the seven online freecycling groups identified in the preceding  
 11 paragraph, I followed a procedure that I found on [www.freecycle.org](http://www.freecycle.org). I made the decision to  
 12 start these groups completely on my own and without any prior approval from The Freecycle  
 13 Network (“TFN”) or Deron Beal, TFN’s Executive Director.

14 4. The seven online freecycling groups that I started from January of 2004 through  
 15 early May of 2004 had the following online names, which I selected when I obtained online  
 16 group service accounts from Yahoo!: Freecycleschoonlake, CliftonParkFreecycle,  
 17 FreecycleEssexCounty, FreeycleRennselearCounty, FreecycleSaratogaCounty,  
 18 FreecycleWarrenCounty, and ClintonCountyFreecycle. I selected the names for these groups  
 19 completely on my own and without any prior approval from TFN or Mr. Beal.

20 5. When I created the seven online freecycling groups, I posted an “etiquette” on the  
 21 home page of each group. The etiquette is the protocol for members to follow when posting  
 22 emails to the group. In the etiquette for each group, I incorporated the phrase, “Keep it free,  
 23 legal, and appropriate for all ages,” which I found on [www.freecycle.org](http://www.freecycle.org). Otherwise, I drafted  
 24 the etiquette on my own and sent the etiquette via email to each new member. I made the  
 25 decision as to what to include in the etiquette completely on my own and without any direction  
 26 or supervision from TFN or Mr. Beal.

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1       6.     For each of my groups, I also established a rule that emails seeking to freecycle  
 2 firearms could not be posted on any of my online freecycling groups. The rule about firearms is  
 3 one that I adopted on my own and was based upon common sense. I adopted this rule against  
 4 firearms completely on my own and without any prior approval from TFN or Mr. Beal.

5       7.     On the home page of each of my online freecycling groups, I created a logo that  
 6 incorporated the logo that is found on [www.freecycle.org](http://www.freecycle.org). The [www.freecycle.org](http://www.freecycle.org) logo is the  
 7 stylized presentation of the word “freecycle” with the elements of a bicycle and a guitar. When  
 8 the [www.freecycle.org](http://www.freecycle.org) logo came out, I created a customized logo for each of my groups by  
 9 putting the [www.freecycle.org](http://www.freecycle.org) logo inside a picture from each of the communities. For example,  
 10 for the Schroon Lake group, I pasted the [www.freecycle.org](http://www.freecycle.org) logo inside a picture of Schroon  
 11 Lake, and then placed the picture with the [www.freecycle.org](http://www.freecycle.org) logo on the home page of the  
 12 Schroon Lake online group. I created these customized logos completely on my own and  
 13 without any prior approval from TFN or Mr. Beal. Neither TFN nor Mr. Beal placed any  
 14 restrictions or conditions on my use of the [www.freecycle.org](http://www.freecycle.org) logo.

15      8.     Until January or February of 2005, I was the sole owner of the seven groups that I  
 16 started in early 2004. Initially, I was the only moderator for each group. As such, I approved  
 17 new members and reviewed (or “moderated”) their emails before posting to the group. When  
 18 new members learned how to follow the etiquette for posting emails, I removed new members  
 19 from moderation so that I no longer had to review their emails before posting to the group. From  
 20 time to time, I added moderators to assist with the work of running the groups. I engaged in  
 21 these activities independently and without any direction, supervision, or assistance from TFN or  
 22 Mr. Beal.

23      9.     I also helped to grow my groups by inviting family and friends to join, as well as  
 24 through local advertising. One example of advertising is that I wrote a letter to the editor of a  
 25 local newspaper, explaining the freecycle concept. I also had business cards made that I would  
 26 leave at various businesses. These business cards contained the phrases, “freecycling your  
 27 unneeded items” and “be a freecycler, give it away.” I also posted, on public bulletin boards,  
 28

1 tear-off fliers that allowed an individual to tear off a small piece of paper from the bottom of the  
 2 page and that had "freecycle.org" printed on the piece of paper. I engaged in these activities  
 3 independently and without any direction, supervision, or assistance from TFN or Mr. Beal.

4       10.     Each of the seven online freecycling groups that I created was up and running  
 5 before the group was listed on www.freecycle.org. To get one of my groups listed on  
 6 www.freecycle.org, I sent an email to info@freecycle.org and included my name, the name of  
 7 the group, and the URL or internet address. After I sent an email, the group was listed on  
 8 www.freecycle.org, typically within twenty-four hours. In the process of getting each group  
 9 listed on freecycle.org, I never had any conversations or email exchanges with Mr. Beal or TFN.  
 10 In fact, I had no prior contact with Mr. Beal or TFN before I listed my groups on  
 11 www.freecycle.org. I was unaware that there was any review of any of my freecycling groups  
 12 before they were listed on www.freecycle.org. There were no requirements or conditions to have  
 13 any of my freecycling groups listed on www.freecycle.org. I entered into no contracts with Mr.  
 14 Beal or TFN regarding my online freecycling groups.

15       11.     Right after I started my first online freecycling group, I joined the "mod squad"  
 16 online discussion group. This was a group for owners and moderators to discuss problems,  
 17 ideas, and any issues that might turn up.

18       12.     One early discussion on the mod squad concerned the phrase "free, legal, and  
 19 appropriate for all ages." I am aware that Mr. Beal conducted a poll, in approximately January  
 20 or February of 2004, about whether each freecycling group should be required to state that all  
 21 items posted should be "free, legal, and appropriate for all ages." The moderator members of  
 22 the mod squad voted that each group should make this statement.

23       13.     The rule that items listed in an email posting must be "free, legal, and appropriate  
 24 for all ages" was more of a guideline left to interpretation by local freecycling groups. As an  
 25 owner, I was free to interpret the phrase "appropriate for all ages." I am unaware that any online  
 26 freecycling group was ever removed from the list on www.freecycle.org because of a decision  
 27 about what is "free, legal, and appropriate for all ages."

1       14. Another discussion on the modsquad group was the particular version of a logo to  
 2 adopt. At this time, in May of 2004, there was more than one version of the stylized version of  
 3 the word "freecycle" with the elements of a guitar and bicycle. Mr. Beal set up a poll for  
 4 members of the modsquad group, so that the moderator members of that group would select the  
 5 particular version. The moderator members of the modsquad voted for the particular version of  
 6 [www.freecycle.org](http://www.freecycle.org) logo that is still used by TFN. A true and correct copy of the poll that Mr.  
 7 Beal posted to the modsquad is attached to this Declaration as Exhibit A.

8       15. In April of 2004, Mr. Beal stated, in an email to the modsquad, that the rights for  
 9 the name "Freecycle Network" were owned by RISE, where Mr. Beal was a paid employee. A  
 10 true and correct copy of this email is attached to this Declaration as Exhibit B.

11       16. In May of 2004, I volunteered to help with growing the freecycling movement,  
 12 and Mr. Beal quickly accepted my offer. On May 19, 2004, Mr. Beal asked that I run the News  
 13 Wire section of TFN's Web site, [www.freecycle.org](http://www.freecycle.org). Basically, I was asked to post articles  
 14 pertaining to freecycling and, in particular, articles about TFN or local groups that were listed on  
 15 [www.freecycle.org](http://www.freecycle.org). To gather articles, I used a feature on the internet search engine, Google,  
 16 that would notify me of any article containing the word "freecycle." Mr. Beal would also email  
 17 articles as he found them, and ask me to post them to the News Wire.

18       17. In July of 2004, while helping to post articles on the News Wire section of  
 19 [www.freecycle.org](http://www.freecycle.org), I called Mr. Beal at home and mentioned that posting the full text of  
 20 copyrighted articles on the site was not proper without written consent from the originator. Mr.  
 21 Beal assured me that posting copyrighted articles was 'OK' and that, if anyone complained, 'I  
 22 will take the heat.' In an email dated July 27, 2004, Mr. Beal asked me to post articles before  
 23 obtaining permission. A true and correct copy of that email is attached to this Declaration as  
 24 Exhibit C.

25       18. On August 27, 2004, Mr. Beal sent an email to the modsquad, discussing a group  
 26 that had set up a Web site in Canada with a domain name of "freecycle.ca." This email was the  
 27 first time that I was fully aware that Mr. Beal was claiming trademark rights in the phrase "The  
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1       Freecycle Network.” A true and correct copy of Mr. Beal’s email is attached to this Declaration  
 2 as Exhibit D.

3           19.     In early September of 2004, I became a volunteer New Group Approver (“NGA”)  
 4 for the State of New York. This was the first time that I was aware that there were NGAs or that  
 5 there was an approval process for new online freecycling groups. A new group had to go  
 6 through the new approval process before the new group could be listed on TFN’s Web site.  
 7 Shortly after becoming the NGA for New York, in approximately October 2004, Mr. Beal  
 8 appointed me the Senior NGA for all of the new NGAs who were approving new freecycling  
 9 groups.

10          20.    As an NGA, I learned of new online freecycling groups from the  
 11 [www.freecycle.org](http://www.freecycle.org) Web site. I would go to a special page on [www.freecycle.org](http://www.freecycle.org) and use a code  
 12 to gain access. On that page would be a list of individuals who wanted to start new groups,  
 13 along with each individual’s email address. I would then contact the individual and start the  
 14 process of approving the new group.

15          21.    As an NGA, I first checked to see if the new group overlapped geographically  
 16 with an existing online freecycling group. I would also email nearby groups already listed on  
 17 [www.freecycle.org](http://www.freecycle.org) to make sure that there were no objections to a new group in the region. If  
 18 there was not a conflict in terms of geographic coverage, I proceeded to the next step.

19          22.    As an NGA, the next step was to make sure that a new online group was set up in  
 20 a particular way. For example, each new group would have (i) the [www.freecycle.org](http://www.freecycle.org) logo with  
 21 the stylized presentation of the word “freecycle” that contains the elements of a bicycle and  
 22 guitar, (ii) a standardized etiquette, (iii) a “welcome file” with text for an email to welcome new  
 23 members to the group, (iv) a “leaving file” with text for an email to members who left the group,  
 24 (v) a “banned file” with text for an email to members who were prevented from posting emails to  
 25 the group, and (vi) [ersatzfriend@freecycle.org](mailto:ersatzfriend@freecycle.org) as a co-owner. A true and correct copy of the  
 26 standardized etiquette is attached to this Declaration as Exhibit E.

1       23. Once I had completed the two steps described above in Paragraphs 21 and 22, I  
2 would approve the new group. I would click on a button on the [www.freecycle.org](http://www.freecycle.org) Web site,  
3 and the new group would be automatically added to the list of online freecycling groups on that  
4 Web site.

5       24. "Ersatzfriend" was a fictional person invented by TFN. The requirement to  
6 include Ersatzfriend as a co-owner was later dropped by a vote of the member moderators of the  
7 modsquad.

8       25. As an NGA, I did not require that a new group enter into a contract with TFN or  
9 Mr. Beal. I did not place any restrictions or conditions upon a new group's use of the word  
10 "freecycle," the phrase "The Freecycle Network," or the [www.freecycle.org](http://www.freecycle.org) logo. At no time as  
11 an NGA did I monitor or inspect freecycling groups that were already approved. TFN and Mr.  
12 Beal never asked NGAs to undertake any of these activities, during my tenure as NGA. A true  
13 and correct copy of an email that Mr. Beal sent to an online discussion group for NGAs is  
14 attached to this Declaration as Exhibit F.

15       26. During my time as an NGA, I approved many of the new online freecycling  
16 groups. I had no prior contact with the individuals who wanted to start new groups and whose  
17 contact information I obtained from [www.freecycle.org](http://www.freecycle.org). Some of the individuals with new  
18 freecycling groups had no idea about how to build a Yahoo! Group. For these individuals, I  
19 spent much time helping them to get their groups up and running, as well as showing them how  
20 to moderate an online group. I did this on my own, to better the grassroots freecycling  
21 movement and to let them know that I cared about their new group. Other individuals already  
22 had online freecycling groups up and running, and these individuals did not need as much of my  
23 time.

24       27. At no time in the process of approving new online freecycling groups or helping  
25 those groups to get started did I review email postings to see if the items were "free, legal, and  
26 appropriate for all ages." Because these were new groups, some did not have any postings at all.  
27

1 In any event, the interpretation of what was "appropriate for all ages" was, at all times, a matter  
2 for the owners and moderators of local groups to decide for themselves.

3 28. In September of 2005, I learned that TFN would not allow a volunteer owner to  
4 own more than one online freecycling group. Because I had been a dedicated volunteer, I was  
5 permitted to keep two of my groups. As a condition of remaining affiliated with TFN, I had to  
6 give up the other groups that I had worked so hard to grow. When I learned of the rule that one  
7 person could be an owner of only one group, I objected in an email to other senior volunteers and  
8 to Mr. Beal. A true and correct copy of an email string containing my objection is attached as  
9 Exhibit G.

10 29. In October 2004, I accepted Mr. Beal's invitation to join the New Webpage  
11 Planning Team ("NWPT"), a group of senior TFN volunteers who discussed issues and provided  
12 direction with regard to Mr. Beal's plans to move online freecycling groups from Yahoo! to a  
13 new Web site owned and operated by TFN. Because I could only devote so much time as a  
14 volunteer, when I accepted the invitation to join NWPT, I stepped away from my positions as an  
15 NGA and on the News Wire section of TFN's Web site. I continued, however, to own and  
16 moderate online freecycling groups.

17 30. The NWPT discussed the best way to set up a Web site and how to get the job  
18 done. One issue that was raised was whether the new Web site would allow an individual to visit  
19 the Web site, enter location information, and then review email postings of nearby freecyclers.  
20 This created a problem because it would allow individuals to bypass the local online groups  
21 which, as Mr. Beal had always stressed, were intended to build local communities. A true and  
22 correct copy of one string of emails in the NWPT online group that discusses these issues is  
23 attached to this Declaration as Exhibit H.

24 31. Around the time that I joined the NWPT, in approximately October of 2004, I first  
25 became aware that TFN wanted to protect the word "freecycle" as a trademark.

26 32. In approximately January and February of 2005, I was becoming increasingly  
27 disenchanted with the increasing number of rules and regulations, all of which signaled that Mr.  
28

1 Beal wanted to control the grassroots freecycling movement through TFN. One example of a  
 2 rule with which I disagreed was the requirement that each online freecycling group must have  
 3 Ersatzfriend as a co-owner, which effectively gave TFN control over every local group.

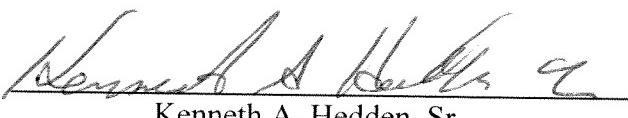
4       33. In February of 2005, Mr. Beal sent an email to the modsquad, announcing that he  
 5 had secured a corporate sponsorship from Waste Management, Inc. Mr. Beal also announced  
 6 that he would quit his job and support himself with sponsorship funds. This was the last straw  
 7 for me. I disagreed with accepting money from Waste Management, Inc., because of its  
 8 questionable record on environmental matters. I disagreed with Mr. Beal using the money so  
 9 that he could quit his job, because he expected the rest of us to devote considerable time as  
 10 volunteers in addition to our full-time jobs. I disagreed with the evolving corporate character of  
 11 TFN, because it was at odds with a grassroots environmental movement. A true and correct copy  
 12 of a February 6, 2005, email from Mr. Beal to the modsquad announcing the Waste  
 13 Management, Inc., sponsorship is attached to this Declaration as Exhibit I. A true and correct  
 14 copy of a February 6, 2005, article publicizing the Waste Management, Inc., sponsorship is  
 15 attached to this Declaration as Exhibit J.

16       34. In February of 2005, I left TFN. During the entire time that I was affiliated with  
 17 TFN, group owners, moderators, senior volunteers, and even Mr. Beal frequently used the word  
 18 “freecycle” as a noun, gerund, adjective, and as a verb. We would say, for example, that we  
 19 wish folks happy freecycling, thanks for being such great freecyclers, and it is good for our earth  
 20 to freecycle. As recently as an article published on February 18, 2007, Mr. Beal is attributed  
 21 with using the word “freecycling.” A true and correct copy of that article is attached to this  
 22 Declaration as Exhibit K.

23       35. In February of 2005, I started my own freecycling community, called Sharing is  
 24 Giving. It is community minded, stayed grassroots, and is still growing. I provide links to other  
 25 freecycling groups on the Sharing is Giving Web site so that the word can get out about those  
 26 groups. I also cross-list all of my online freecycling groups with those on [www.freesharing.org](http://www.freesharing.org),  
 27 a freecycling community started by Eric Burke, who left TFN about the same time that I did.

1       36. As Sharing is Giving began to grow, I began to receive cease and desist letters  
2 from TFN. In January of 2007, TFN sent me two cease and desist letters, demanding that I turn  
3 over the URL to the Sharing is Giving Web site. Because the URL is the internet address for my  
4 Web site, TFN was demanding that I turn over my Web site to TFN. I responded to TFN, asking  
5 them, in the future, to have TFN's attorneys contact my attorney, whose address I provided. I  
6 have not heard from TFN since.

7                  I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct. Executed in Schroon Lake, New York on 07/03/07.  
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11                  Kenneth A. Hedden, Sr.  
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